Crl.A. 312/2002
BEFORE
THE HON'BLE MR JUSTICE P.G.AGARWAL

Heard Mr.A.Sarma, learned counsel for the appellant and the learned Public Prosecutor, Assam.

The appellant Sonia Proja stands convicted under Section 376 IPC and sentenced to undergo imprisonment for 7 years and to pay fine of Rs.3000/-, in default, to undergo further imprisonment for one year in Sessions Case No.118/2001 tried by the learned Additional Sessions Judge, Sonitpur, Tezpur.

The prosecution case in brief is that on the night of 05.07.2000 while the victim PW-4 Radhi was sleeping inside her house, the accused person took her from the house and thereafter along with the co-accused Tikra Bhuyan committed rape on her. On the next day the matter was reported to the villagers whereupon a village bichar was called. However, the accused persons did not attend the bichar and thereafter the FIR was lodged.

In the present case, we find that the entire prosecution case rest on sole testimony of the prosecutrix. She has given a detailed statement as to how she was taken out of the house and how she was violated physically against her will. The statement of PW-4 has been supported by her father, to whom she reported the incident.

So far the medical evidence are concerned, it is not relevant as the victim was examined after five days of the incident. In the present case the defence came out with the plea that it is a consentual intercourse under Section 114(A) of the Evidence Act, which reads as follows:

114-A. Presumption as to absence of consent in certain prosecution for rape- In a prosecution forrape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of Section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

As stated above, the girl has categorically deposed that the sexual intercourse was against her will and consent and as such the burden was on the defence to rebut the above deposition. But, we find that the defence has miserably failed to do the same. As a matter of fact, the defence plea was all together difference when the accused persons were examined under Section 313 Cr.P.C. In view of the statement of the victim, who is a rustic illiterate village girl, we hold that the offence under Section 376 IPC is made out against the accused appellants. The trial Court has rightly imposed the minimum sentence of 7 years imprisonment and fine of Rs.3000/-, in default, to undergo further imprisonment for 1 year.

It is submitted that the accused person is in jail since his arrest on 26.12.2000. Thus, he has completed more than 6 ‰ years. It is further stated that he is a poor man having no source of income and also a married person. On consideration of the above submission, we reduce the sentence to the period already undergone by him. The accused be released from jail forthwith, if not wanted in connection with any other case.

Send down the records.